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The “1033 Program,” Department of Defense Support to Law Enforcement

Daniel H. Else

Specialist in National Defense

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Summary

The United States has traditionally kept military action and civil law enforcement apart, codifying that separation in the Posse Comitatus Act of 1878. On the other hand, Congress has occasionally authorized the Department of Defense (DOD) to undertake actions specifically intended to enhance the effectiveness of domestic law enforcement through direct or material support.

One such effort is the so-called “1033 Program,” named for the section of the National Defense Authorization Act (NDAA) of 1997 that granted permanent authority to the Secretary of Defense to transfer defense material to federal and state agencies for use in law enforcement, particularly those associated with counter-drug and counter-terrorism activities.

The 1997 act was preceded by 1988 legislation that expanded DOD’s role in the interdiction of illicit drug trafficking. That was soon followed by temporary authority to transfer excess defense material, including small arms and ammunition, from excess DOD stocks to law enforcement agencies for use in counter-drug activities. This could be done at no cost to the receiving agency. The 1997 NDAA expanded that authority to include counter-terrorism activities and made it permanent. It is codified as 10 U.S.C. §2576a.

The 1033 Program is administered by the Law Enforcement Support Office (LESO) of the Defense Logistics Agency (DLA). Under it, local and state law enforcement agencies may apply to DLA to participate. DLA requires the governor of the state to execute a Memorandum of Agreement (MOA) and appoint a state 1033 Program coordinator, who is responsible for ensuring that the program is properly administered within the state and that appropriate property records are maintained. Approved agencies may request material from DLA through their state coordinators. The LESO retains final approval authority over the types and quantities of material transferred from DOD excess stocks to the agencies. Any material requiring demilitarization before being released to the public must be returned to DLA when no longer needed by the receiving law enforcement agency.

LESO states that 11,000 agencies nationwide are currently registered and that 8,000 of them use material provided through the 1033 Program.

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Department of Defense Support to Law Enforcement

American tradition has long maintained a distinct separation between military force and civil law enforcement. Nevertheless, federal troops were commonly used to enforce civil law during the years immediately after the Civil War, particularly in the states of the former Confederacy. The Posse Comitatus Act of 1878 (18 U.S.C. §1385) was written to ensure that this practice would come to an end.¹

Though the act codified an American tradition of separating military from civilian affairs, Congress has occasionally authorized the President to deploy military force to enforce, or assist in the enforcement, of various laws. For example, Congress has vested the Coast Guard, a federal armed force, with a broad range of law enforcement responsibilities. Congress has also passed statutes enabling the employment of military force in law enforcement support under specific circumstances, such as permitting the President to call out the armed forces in times of insurrection and domestic violence,² or authorizing the armed forces to share information and equipment with civilian law enforcement agencies.³

One important example of congressional direction in the use of the armed forces to support law enforcement was seen in the enactment of the National Defense Authorization Act, Fiscal Year 1989.⁴ Title XI of the act tasked the Department of Defense (DOD) to assume a prominent role in detecting and monitoring illegal drug production and trafficking. DOD became “the single lead agency of the Federal Government for the detection and monitoring of aerial and maritime transit of illegal drugs into the United States,” and the integrator of an effective system of command, control, communications, and intelligence assets dedicated to drug interdiction.⁵ The act also placed Coast Guard law enforcement detachments aboard “every appropriate surface naval vessel at sea in a drug-interdiction area” and made “available any equipment (including associated supplies or spare parts), base facility, or research facility of the Department of Defense to any Federal, State or local law enforcement official for law enforcement purposes.”⁶ Finally, it authorized additional DOD funding to the National Guard for drug interdiction and enforcement operations.⁷

The following year, in the National Defense Authorization Act for Fiscal Years 1990 and 1991, Congress created a pathway for DOD to directly transfer to federal and state agencies equipment (so-called “personal property”) that was excess to the needs of the department and suitable for use

¹ *Posse comitatus* refers to the customary English authority of a sheriff to summon the population of his county to his assistance to, for example, keep the peace or arrest felons. The act forbids the willful use of any part of the Army (later expanded to include the Air Force) as a posse comitatus or otherwise to execute the laws.

² See 10 U.S.C. §§331-335.

³ See 10 U.S.C. §§371-382. For more information regarding the background and scope of the Posse Comitatus Act, see CRS Report R42659, *The Posse Comitatus Act and Related Matters: The Use of the Military to Execute Civilian Law*, by Charles Doyle and Jennifer K. Elsea.

⁴ Act of September 29, 1988, P.L. 100-456, 102 Stat. 1918.

⁵ *Ibid.*, Section 1102 and Section 1103.

⁶ *Ibid.*, Section 1104.

⁷ *Ibid.*, Section 1105.

in counter-drug activities.⁸ Under Section 1208, the Secretary of Defense could transfer defense equipment, including small arms and ammunition, from existing defense stocks without cost to the receiving agency. In transferring such property, the Secretary of Defense was required to consult with the Attorney General and the Director of National Drug Control Policy (the federal government's so-called "drug czar").⁹ The act included a sunset provision that would have terminated this authority on September 30, 1992. This termination date was extended to September 30, 1997 by the enactment of Section 1044 of the National Defense Authorization Act for Fiscal Year 1993.¹⁰

The 1033 Program

As the revised termination date approached, the 104th Congress considered making its authority permanent. The House version of the National Defense Authorization Act for Fiscal Year 1997 contained language (H.R. 3230, Section 103) that would have expanded eligibility for property transfers to all law enforcement while retaining a priority for counter-narcotics activities. The Senate's amendment of the bill contained no similar provision. In conference, the Senate receded, but with an amendment that extended priority in property transfer to both counter-narcotics and counter-terrorism activity. The amendment also ensured that DOD would incur no cost beyond management of the program in transferring this excess equipment to these law enforcement agencies. The language was enacted as Section 1033 and is codified under Title 10, Section 2576a, of the United States Code (10 U.S.C. §2576a).¹¹

Materials Offered to Law Enforcement Agencies through the 1033 Program

The program is administered by the Law Enforcement Support Office (LESO) of the Defense Logistics Agency (DLA), located at DLA Disposition Services Headquarters in Battle Creek, Michigan. Though participating agencies initiate requests for material, the Defense Logistics Agency (DLA) retains the final authority to determine the type, quantity, and location of excess military property suitable for transfer and use in law enforcement activities.

General categories of equipment offered for transfer include office furniture, household goods (e.g., kitchen equipment), exercise equipment, portable electric generators, tents, and general law enforcement supplies (e.g., handcuffs, riot shields, holsters, binoculars, and digital cameras). Heavy equipment, such as cranes, and various types of land vehicles are available. Watercraft, aircraft, and weapons are also eligible for transfer. Miscellaneous other property includes tool

⁸ See Section 1208 of Title XII in the National Defense Authorization Act for Fiscal Years 1990 and 1991 (P.L. 101-189, 103 Stat. 1566) at **Appendix A**. Personal property includes any belongings that are not real estate property, buildings, or other fixed infrastructure. The section was codified as 10 U.S.C. 372 note.

⁹ The position of Director of National Drug Control Policy had been created by the 100th Congress as part of the 1988 omnibus drug bill, the Anti-Drug Abuse Act of 1988 (H.R. 5210, P.L. 100-690), and President George H.W. Bush appointed William T. Bennett to the position.

¹⁰ National Defense Authorization Act for Fiscal Year 1993 (H.R. 5006, P.L. 102-484).

¹¹ This was Section 1033(a)(1) in Division A, Title X, Subtitle B of the National Defense Authorization Act for 1997 (P.L. 104-201, 110 Stat. 2639). It was enacted on September 23, 1996.

kits, first aid kits, blankets and bedding, lawn maintenance supplies, combat boots, and office equipment (computers, printers, fax machines, etc.).

Program Participants

Law enforcement agencies wishing to take part in the 1033 Program apply to the LESO through their state's 1033 Program coordinator (see below). Once their participation has been approved by the state coordinator and the LESO, the law enforcement agencies appoint officials to visit their local DLA Disposition Services Site, where they screen property and place requests for specific items. The forms are then forwarded to the state coordinator for review; once approved, the LESO makes the final determination of whether or not the property will be transferred. Law enforcement agencies that receive approval for property transfers must cover all transportation costs.

According to the LESO, 11,000 law enforcement agencies are registered nationwide and 8,000 are currently using property provided through the program.¹²

Material Accountability

Each state participating in the program must set up a business relationship with DLA through the execution of a Memorandum of Agreement (MOA). Each participating state's governor is required to appoint a state coordinator to ensure that the program is used correctly by the participating law enforcement agencies. The state coordinators are expected to keep property accountability records, investigate any alleged misuse of property, and, in certain cases, report violations of the MOA to DLA. The LESO may suspend the participation of a state that cannot properly account for the property entrusted to it, and state coordinators may suspend the participation of any law enforcement agency thought to abuse the program. The chief of police or equivalent senior official of the receiving law enforcement organization is held responsible for all 1033 Program controlled property.

Additionally, DLA has a compliance review program. The program's objective is to have the Law Enforcement Support program staff visit each state coordinator and assist him or her in ensuring that property accountability records are properly maintained, minimizing the potential for fraud, waste and abuse.

Some of the equipment offered to law enforcement through the program, such as weapons or tactical vehicles, possesses significant military capabilities. By law, these items cannot be released to the general public and ownership is never transferred to law enforcement agencies – rather, they are considered to be on loan. This equipment is closely tracked by both the LESO and the relevant state coordinator and it must be returned to a DLA Disposition Services Site when no longer needed for law enforcement purposes.

Property not considered to be uniquely military, such as office equipment or first aid kits, is considered controlled property for the first year that it is held by the agency and must be

¹² See DLA Disposition Services website. The LESO defines a law enforcement agency as “a government agency whose primary function is the enforcement of applicable federal, state and local laws and whose compensated law enforcement officers have the powers of arrest and apprehension.”

accounted for in the same manner as all other 1033 Program property. At the end of the year, title is transferred to the law enforcement agency and the property is removed from the audited inventory.

Congressional Reporting Requirements

The statute does not require any regular reports to Congress on the 1033 Program.

Additional Information Resources

More information regarding the 1033 Program is available through the LESO website (<http://www.dispositionservices.dla.mil/leso/pages/default.aspx>). A number of states maintain their own law enforcement support offices that post program information tailored to their own jurisdictions (e.g., Ohio's Law Enforcement Support Office at <http://ohioleso.ohio.gov/>).

Appendix A. Text of Section 1208 of the National Defense Authorization Act for 1990 (P.L. 101-189)

SEC. 1208. TRANSFER OF EXCESS PERSONAL PROPERTY

(a) TRANSFER AUTHORIZED- (1) Notwithstanding any other provision of law and subject to subsection (b), the Secretary of Defense may transfer to Federal and State agencies personal property of the Department of Defense, including small arms and ammunition, that the Secretary determines is--

- (A) suitable for use by such agencies in counter-drug activities; and
- (B) excess to the needs of the Department of Defense.

(2) Personal property transferred under this section may be transferred without cost to the recipient agency.

(3) The Secretary shall carry out this section in consultation with the Attorney General and the Director of National Drug Control Policy.

(b) CONDITIONS FOR TRANSFER- The Secretary may transfer personal property under this section only if--

- (1) the property is drawn from existing stocks of the Department of Defense; and
- (2) the transfer is made without the expenditure of any funds available to the Department of Defense for the procurement of defense equipment.

(c) APPLICATION- The authority of the Secretary to transfer personal property under this section shall expire on September 30, 1992.

Appendix B. Text of 10 U.S.C. §2576a, "Excess Personal Property: Sale or Donation For Law Enforcement Activities"

§2576a. Excess personal property: sale or donation for law enforcement activities

(a) Transfer authorized.

(1) Notwithstanding any other provision of law and subject to subsection (b), the Secretary of Defense may transfer to Federal and State agencies personal property of the Department of Defense, including small arms and ammunition, that the Secretary determines is--

(A) suitable for use by the agencies in law enforcement activities, including counter-drug and counter-terrorism activities; and

(B) excess to the needs of the Department of Defense.

(2) The Secretary shall carry out this section in consultation with the Attorney General and the Director of National Drug Control Policy.

(b) Conditions for transfer. The Secretary of Defense may transfer personal property under this section only if--

(1) the property is drawn from existing stocks of the Department of Defense;

(2) the recipient accepts the property on an as-is, where-is basis;

(3) the transfer is made without the expenditure of any funds available to the Department of Defense for the procurement of defense equipment; and

(4) all costs incurred subsequent to the transfer of the property are borne or reimbursed by the recipient.

(c) Consideration. Subject to subsection (b)(4), the Secretary may transfer personal property under this section without charge to the recipient agency.

(d) Preference for certain transfers. In considering applications for the transfer of personal property under this section, the Secretary shall give a preference to those applications indicating that the transferred property will be used in the counter-drug or counter-terrorism activities of the recipient agency.¹³

¹³ This section was added by the Act of September 23, 1996, P.L. 104-201, Division A, Title X, Subtitle B, §1033(a)(1), 110 Stat. 2639.

Author Contact Information

Daniel H. Else
Specialist in National Defense
delse@crs.loc.gov, 7-4996